

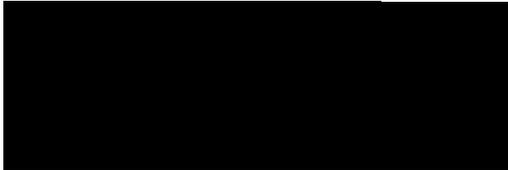
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services



H2

FILE: [REDACTED]

Office: MEXICO CITY, MEXICO  
(PANAMA CITY, PANAMA)

Date:

SEP 17 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Panama. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on November 29, 2006.

On appeal, counsel for the applicant asserts that the District Director's decision was too narrow, and failed to consider all of the factors in the aggregate.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record indicates that the applicant entered the United States in August 1988 with a B-2 visa. Her visa expired, and, subsequent to immigration proceedings, the Board of Immigration Appeals granted her voluntary departure on April 8, 1993. The applicant did not depart the United States. She married a U.S. citizen in 1997 and filed an adjustment application based on that marriage on August 26, 1997. Her adjustment application was denied on August 10, 2004. The applicant was detained in 2005, and

self-deported to Panama in July 2005. Therefore, the applicant accrued more than one year of unlawful presence in the United States, from April 1, 1997, the effective date of the unlawful presence provision of the Act until August 26, 1997, and from August 10, 2004 until July 2005, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record includes, but is not limited to, counsel’s brief; a statement from the applicant’s spouse; pictures of the applicant, her husband and their daughters; birth certificates for the applicant’s children; copies of educational certificates and radiological licenses for the applicant’s spouse; and a marriage certificate for the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the applicant's exclusion is forcing the applicant's spouse to relive a traumatic separation endured during his childhood when his parents divorced, that he is suffering severe mental depression, has struggled to pay bills and expenses, and has had to sell his house in Houston. Counsel further states that the applicant's spouse lives with his brother in a small apartment and sleeps on the floor, has had to abandon his university studies and cannot afford medical insurance due to the expenses of maintaining his family in Panama. In referencing the applicant's spouse's mental condition, counsel refers to a report by [REDACTED] a Licensed Social Clinical Worker.

In her report, [REDACTED] concludes that the applicant is clinically depressed, and is suffering physical and psychological symptoms due to the stress of his separation from the applicant and his family. However, [REDACTED] cites to a number of factors that are not supported by the record, such as financial hardship and medical hardship, including gastrointestinal problems and significant weight gain from stress and anxiety. She also states that the applicant lacks medical insurance. It should be noted that the record does not include any evidence to establish economic hardship, such as employment verification, financial obligations, remittances of money to the applicant or other financial documentation. Moreover, although [REDACTED] states that the applicant's spouse has had to sell his home in order to support his family in Panama, the AAO notes that, in his March 9, 2006 statement, the applicant indicates that he and the applicant sold their home and moved in with his in-laws in order to save money to buy a better home. In addition, the record does not document that the applicant is suffering from medical conditions such as gastrointestinal distress or that his professional employment is not providing him with medical insurance.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from [REDACTED] is based on a single interview with the applicant's spouse. The record, therefore, fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the clinical depression suffered by the applicant's spouse. Moreover, in that the submitted evaluation is based on a single interview with the applicant's spouse and is unsupported by other evidence in the record, the AAO finds its conclusions to be speculative and of diminished value to a determination of extreme hardship.

The record is incomplete with regard to evidence establishing any financial hardship that would be experienced by the applicant's spouse if his wife is excluded. While the AAO notes the list of expenses that the applicant's spouse provided to [REDACTED] there is no documentary evidence establishing these expenses or the income earned by the applicant's spouse. In addition, while the applicant's spouse has asserted that he is supporting his spouse and children in Panama, the record also indicates that the applicant's spouse is currently residing with her parents. Without documentary evidence of the financial obligations faced by the applicant's spouse, the record does not establish that he is unable to sustain himself financially in the United States.

In his March 9, 2006 statement, the applicant's spouse states that separation from his children is causing him great emotional pain, forcing him to relive the traumatic separation of his childhood

when his parents divorced. He also states that he and the applicant had acquired substantial assets, including four cars and a home. The AAO acknowledges that the applicant's spouse will suffer emotional hardship based on the exclusion of his wife. However, as previously discussed, the record does not establish that his suffering rises above that normally experienced by the relatives of excluded aliens.

As noted above, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. Counsel for the applicant asserts that, if the applicant's spouse were to accompany the applicant to Panama, he would suffer the loss of professional employment, and would be unable to find employment in Panama since he does not speak the language. He further asserts the applicant's spouse does not have any family living in Panama. In light of the applicant's spouse's lack of family ties in Panama, his inability to speak Spanish and the resulting effect on his ability to obtain employment and to adjust to Panamanian culture and society, the AAO finds that joining his wife in Panama would be an extreme hardship for him. As noted above, however, the applicant has not established that her spouse would experience extreme hardship if she were to be excluded and he remained in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's husband will experience hardship as a result of his wife's exclusion. The record, however, fails to distinguish his hardship from that commonly associated with removal and separation, and therefore, it does not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.